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1 3. Plaintiff does not know the true names of Defendants, their business
2 capacities, their ownership connection to the property and business, or their
3 relative responsibilities in causing the access violations herein complained of,
4 and alleges a joint venture and common enterprise by all such Defendants.
5 Plaintiff is informed and believes that each of the Defendants herein,
6 including Does 1 through 10, inclusive, is responsible in some capacity for
7 the events herein alleged, or is a necessary party for obtaining appropriate
8 relief. Plaintiff will seek leave to amend when the true names, capacities,
9 connections, and responsibilities of the Defendants and Does 1 through 10,
10 inclusive, are ascertained.

11

12 **JURISDICTION & VENUE:**

13 4. This Court has subject matter jurisdiction over this action pursuant to
14 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans
15 with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

16 5. Pursuant to pendant jurisdiction, an attendant and related cause of
17 action, arising from the same nucleus of operative facts and arising out of the
18 same transactions, is also brought under California's Unruh Civil Rights Act,
19 and the California Disabled Persons Act, which acts expressly incorporate the
20 Americans with Disabilities Act.

21 6. Venue is proper in this court pursuant to 28 U.S.C. § 1331(b) and is
22 founded on the fact that the real property which is the subject of this action is
23 located in this district and that Plaintiff's cause of action arose in this district.

24

25 **FACTUAL ALLEGATIONS:**

26 7. The Plaintiff went to Store in November 2013 to return an item.
27 8. The Store is a facility open to the public, a place of public
28 accommodation, and a business establishment.

1 9. Paths of travel inside the Store are one of the facilities, privileges and
2 advantages offered by defendants to their customers at the Store.

3 10. Although there are shelves and merchandise aisles open to customers
4 for shopping, the path of travels in and throughout these merchandise aisles
5 are not accessible to wheelchair users because of the configuration of the
6 Store and also because the defendants have a practice of placing merchandise
7 and merchandise displays on the route of travel, restricting passage to far less
8 than 36 inches in width in several places.

9 11. The paths of travel in the housewares section, for example, narrow to
10 as little as 18 inches in width. In the women's department, the paths of travel
11 narrow to 30 inches in width. In the men's department, the paths of travel
12 narrow to 12 to 18 inches in some places. Moveable obstructions, such as
13 clothes racks and merchandise bins, make some paths of travel completely
14 inaccessible.

15 12. The defendants have absolutely no policy or procedure in place to
16 prevent merchandise and racks from reducing the paths of travel to levels that
17 are narrower than that allowed by law.

18 13. Additionally, defendants have handicap push/kick pads at their
19 entrances and exits. Unfortunately, some of them either do not work or
20 require multiple depressions before they will work. Moreover, the push/kick
21 pads in the inside (heading out toward the outside) of the Store are not
22 accessible to plaintiff because defendants have moveable advertisement
23 signs in front of their location. These large, moveable objects are an
24 obstruction to the plaintiff.

25 14. Defendants have no policy or procedure in place to make sure that the
26 pads are accessible to wheelchair users who need to use these pads to exit the
27 Store.

28 15. The plaintiff personally encountered these problems. These

1 inaccessible conditions denied the plaintiff full and equal access and caused
2 her difficulty.

3 16. Additionally, on information and belief, the plaintiff alleges that the
4 failure to remove these barriers was intentional because: (1) these particular
5 barriers are intuitive and obvious; (2) the defendants exercised control and
6 dominion over the conditions at this location and, therefore, the lack of
7 accessible facilities was not an “accident” because had the defendants
8 intended any other configuration, they had the means and ability to make the
9 change.

10

11 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS
12 WITH DISABILITIES ACT OF 1990** (On behalf of plaintiff and against all
13 defendants (42 U.S.C. section 12101, et seq.)

14 17. Plaintiff repleads and incorporates by reference, as if fully set forth
15 again herein, the allegations contained in all prior paragraphs of this
16 complaint.

17 18. Under the ADA, it is an act of discrimination to fail to ensure that the
18 privileges, advantages, accommodations, facilities, goods and services of any
19 place of public accommodation is offered on a full and equal basis by anyone
20 who owns, leases, or operates a place of public accommodation. See 42
21 U.S.C. § 12182(a). Discrimination is defined, *inter alia*, as follows:

22 a. A failure to make reasonable modifications in policies, practices,
23 or procedures, when such modifications are necessary to afford
24 goods, services, facilities, privileges, advantages, or
25 accommodations to individuals with disabilities, unless the
26 accommodation would work a fundamental alteration of those
27 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).

28 b. A failure to remove architectural barriers where such removal is

1 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
2 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,
3 Appendix “D.”

4 c. A failure to make alterations in such a manner that, to the
5 maximum extent feasible, the altered portions of the facility are
6 readily accessible to and usable by individuals with disabilities,
7 including individuals who use wheelchairs or to ensure that, to
8 the maximum extent feasible, the path of travel to the altered
9 area and the bathrooms, telephones, and drinking fountains
10 serving the altered area, are readily accessible to and usable by
11 individuals with disabilities. 42 U.S.C. § 12183(a)(2).

12 19. Shelves and display units allowing self-service by customers at stores
13 must be located on an accessible route. 1991 Standards § 4.1.3(12)(b). An
14 accessible route must be at least 36 inches in width. 1991 Standards § 4.3.3.

15 20. Here, the failure to provide accessible paths of travel in and throughout
16 the merchandise aisles is a violation of the law. Moreover, the paths of travel
17 leading to the push/kick pads are not accessible because of advertising
18 signage. The push/kick pads are necessary for people to enter and exit the
19 Store. Without a clear path of travel leading to these pads, plaintiff has no way
20 to independently use the push/kick pads. This is a violation of the law.

21 21. The Defendants are persons who own, operate, lease or lease to a place
22 of public accommodation. As such, the Defendants are required to ensure
23 that persons with disabilities are not discriminated against and, additionally,
24 have specific duties to (1) ensure that all construction, alteration, or
25 modification is barrier free and complies with the Americans with Disabilities
26 Act Accessibility Guidelines (“ADAAG”); and/or (2) remove all existing
27 barriers where such removal is “readily achievable,” and/or (3) to provide
28 alternatives to barrier removal. The Defendants have failed to meet these

1 obligations.

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3 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
4 **RIGHTS ACT** (On behalf of plaintiffs and against all defendants) (Cal Civ §
5 51-53)

6 22. Plaintiff repleads and incorporates by reference, as if fully set forth
7 again herein, the allegations contained in all prior paragraphs of this
8 complaint.

9 23. Because the defendants violated the plaintiffs' rights under the ADA,
10 they also violated the Unruh Civil Rights Act and are liable for damages. (Civ.
11 Code § 51(f), 52(a).)

12 24. Because the violation of the Unruh Civil Rights Act resulted in
13 difficulty, discomfort or embarrassment for the plaintiffs, the defendants are
14 also each responsible for statutory damages, i.e., a civil penalty. (Civ. Code §
15 55.56(a)-(c).)

16

17 **III. THIRD CAUSE OF ACTION: VIOLATION OF THE CALIFORNIA**
18 **DISABLED PERSONS ACT** (On behalf of plaintiffs and against all
19 defendants) (Cal Civ. § 54-54.8)

20 25. Plaintiff repleads and incorporates by reference, as if fully set forth
21 again herein, the allegations contained in all prior paragraphs of this
22 complaint.

23 26. Because the defendants violated the plaintiffs' rights under the ADA,
24 they also violated the Disabled Persons Act and are liable for damages. (Civ.
25 Code § 54.1(d), 54.3(a).)

26 27. Because the violation of the Disabled Persons Act resulted in difficulty,
27 discomfort or embarrassment for the plaintiffs, the defendants are also each
28 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-

1 (c.)
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3 **IV. FOURTH CAUSE OF ACTION: NEGLIGENCE** (On behalf of plaintiff
4 and against all defendants)

5 28. Plaintiff repleads and incorporates by reference, as if fully set forth
6 again herein, the allegations contained in all prior paragraphs of this
7 complaint.

8 29. The Defendants had a general duty and a duty arising under the
9 Americans with Disabilities Act and the Unruh Civil Rights Act and
10 California Disabled Persons Act to provide safe, convenient, and accessible
11 facilities to the plaintiff. Their breach of this duty, as alleged in the preceding
12 paragraphs, has caused injury and damage as alleged above.

13

14 **PRAYER:**

15 Wherefore, Plaintiff prays that this court award damages and provide
16 relief as follows:

17 1. For injunctive relief, compelling defendants to comply with the
18 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
19 Plaintiff is not invoking section 55 of the California Civil Code and is not
20 seeking injunctive relief under the Disabled Persons Act at all.

21 2. Damages under the Unruh Civil Rights Act and/or the California
22 Disabled Persons Act which damages provide for actual damages and a
23 statutory minimum of \$4,000. Note: a plaintiff cannot recover under both
24 acts, simultaneously, and an election will be made prior to or at trial.

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3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant to 42 U.S.C. § 12205; Cal. Civ. Code §§ 52 and 54.3.

Dated: March 6, 2014

CENTER FOR DISABILITY ACCESS

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